



DEPARTMENT OF PERSONNEL

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MEMO PERD #41/03

November 26, 2003

TO: Department Directors
FROM: Jeanne Greene, Director
Department of Personnel

SUBJECT: GOVERNOR'S POLICY AGAINST SEXUAL HARASSMENT AND
DISCRIMINATION

Enclosed is the Governor's Policy Against Sexual Harassment and Discrimination. This policy replaces the previous Policy Against Sexual Harassment. Please ensure all current and new employees read and understand the policy. Agencies should retain the acknowledgement form in the employee's agency personnel file as well as submit a copy to State Records for filing in the employee's official State service jacket.

Also, enclosed are anti-discrimination posters, which should be prominently displayed for view by all employees. These posters display the hotline number for reporting complaints of discrimination and provide a space for you to identify the name of your agency's coordinator. Please contact Connie Buda at (775) 684-0119, if you need additional posters.

Once again, I would like to thank you for providing our employees a workplace that is free from discrimination. If you have any questions regarding the new policy, please contact me at (775) 684-0131.

JG:sq

Enclosures

cc: Agency Administrators
Agency Personnel Liaisons
Agency Personnel Representatives



OFFICE OF THE GOVERNOR

POLICY AGAINST SEXUAL HARASSMENT & DISCRIMINATION

Sexual harassment and discrimination based on race, color, national origin, religion, sex, age, disability, or sexual orientation in any term, condition or privilege of employment are violations of State and federal law.

I. PURPOSE

The purpose of this policy statement regarding sexual harassment and discrimination is to clearly express the position of the State of Nevada that all employees have the right to work in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive or disruptive.

Sexual harassment and discrimination are forms of misconduct that undermine the integrity of the employment relationship. No employee — either male or female — should be subjected to unsolicited and unwelcome sexual overtures or conduct, either verbal or physical. Nor should any employee experience discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Sexual harassment and discrimination are personally offensive, debilitate morale, and, therefore, interfere with work effectiveness. Such behavior will result in disciplinary action up to and including dismissal.

II. COVERAGE

This policy is intended to be applicable to all State employees, officers, appointees such as board members, and volunteers in the executive branch of government. All elected officers are encouraged to adopt this policy.

III. RESPONSIBILITY

- A. Sexual harassment and discrimination, whether committed by a supervisor, coworker, or member of the public is specifically prohibited as unlawful and against State policy. Department directors are responsible for taking immediate and corrective action in response to complaints, regardless of whether the specific acts complained of were sanctioned or specifically forbidden and regardless of the manner in which the department director becomes aware of the conduct.
- B. Department directors shall provide each employee with a copy of this policy informing them that sexual harassment and discrimination are prohibited conduct and will not be tolerated or condoned. All employees will acknowledge receipt and understanding of the policy through a signed statement.

- C. All new employees, officers, appointees, board members and volunteers in the executive branch, shall attend a class on sexual harassment prevention training within 6 months of their appointment. Employees are required to attend refresher training once every two years regarding the State's sexual harassment policy.
- D. Managers and supervisors are also required to attend training related to equal employment opportunity.
- E. Department directors shall advise all employees of their responsibility to report incidents of sexual harassment and discrimination.
- F. Department directors shall designate employees within each agency to act as a coordinator for the reporting of complaints of incidents of sexual harassment and discrimination and will notify employees of the coordinator.
- G. Supervisors shall have a complete understanding of this policy. Supervisors who willfully disregard incidents of sexual harassment or discrimination by subordinates will be disciplined. Supervisors are responsible for ensuring their employees have received training as outlined in this Policy.
- H. It is the responsibility of department directors to make sure their agencies are in full compliance with this Policy and associated legal guidelines.

IV. STATE EMPLOYEES' RIGHTS AND RESPONSIBILITIES

- A. Employees are entitled to work in a workplace free of sexual harassment and discrimination.
- B. Employees are responsible for ensuring they do not sexually harass or discriminate against any other employee, client, applicant for employment, or other individual with whom they have contact in the performance of their duties.
- C. Employees are responsible for cooperating in the investigation of complaints of alleged sexual harassment or discrimination and cooperating with the efforts of their agency, division, board or commission to prevent and eliminate sexual harassment and discrimination and to maintain a working environment free from such unlawful conduct.

V. LEGAL DEFINITIONS AND GUIDELINES

- A. NAC 284.771 specifies that sexual harassment violates the policy of this state and is a form of unlawful discrimination based on sex under state and federal law. An employee shall not engage in sexual harassment against another employee, an applicant for employment or any other person in the workplace.

Sexual harassment is a very serious disciplinary infraction. An appointing authority may impose harsh disciplinary sanctions on persons who commit sexual harassment, even on first-time offenders. The appointing authority, in determining the appropriate level of discipline, and the hearing officer, in reviewing the propriety of the level of discipline selected by the appointing authority, must consider the principles of progressive discipline as set forth in NRS 284.383.

- B. As used in NAC 284.771 and section 703 of Title VII of the Civil Rights Act of 1964, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other speech or physical conduct of a sexual nature when:
 - a) Submission to such speech or conduct is made either explicitly or implicitly a term or condition of a person's employment;
 - b) Submission to or the rejection of such speech or conduct by a person is used as the basis for employment decisions affecting that person; or
 - c) Such speech or conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile or offensive working environment.
- C. Equal opportunity with regard to the terms, conditions and privileges of employment is mandated under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, NRS 281.370, and numerous sections of Chapter 284 of the NRS, which address the State's Personnel System.
- D. The State of Nevada is an equal opportunity employer and does not discriminate against job applicants or employees based on race, color, religion, sex, national origin, disability, age or sexual orientation.
- E. Federal law prohibits retaliation against employees who bring sexual harassment or discrimination charges or assist in investigating such charges. Any employee making sexual harassment or discrimination complaints or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment, nor discriminated against, disciplined or discharged because of the complaint.

VI. PROCEDURE

A. EMPLOYEE

1. Employees who believe they have been a victim of sexual harassment or discrimination shall first advise the person believed to have engaged in sexual harassment or discrimination that the conduct is unwelcome, undesirable or offensive. If the employee elects not to confront the alleged harasser or if the

conduct persists after an objection, the employee shall report the incident as set forth below. Employees will be asked to complete a complaint form.

2. Employees shall report incidents of sexual harassment or discrimination to the coordinator within their agency designated to receive such complaints or call the Department of Personnel's Harassment/Discrimination Hotline at (800) 767-7381. Employees are always entitled to consult an attorney, labor representative or to report the incident to the Nevada Equal Rights Commission.
3. Employees should give the completed complaint form and any supporting documentation to the coordinator designated within their agency to receive such complaints or to the assigned investigator(s).

B. DEPARTMENT DIRECTORS

1. After notification of the employee's complaint, department directors shall promptly notify the agency's Deputy Attorney General and the Department of Personnel's Sexual Harassment/Discrimination Unit. The agency coordinator will complete the complaint intake report and obtain a completed copy of the complaint form from the employee filing the complaint. The coordinator will forward a copy of the completed intake report to the agency's Deputy Attorney General and the Sexual Harassment/Discrimination Unit, along with any supporting documentation.
2. After receipt of the intake report and original complaint form, an investigator in the Sexual Harassment/Discrimination Unit will schedule an initial interview with the agency's coordinator and appropriate management personnel to gather information relevant to the complaint as well as any essential organizational background.
3. The investigator will begin the investigation as soon as witnesses are available.
4. Investigations will be conducted discreetly, with as little disruption to the workplace as possible. All information gathered in an investigation will be confidential, and the confidential nature of the investigative process will be conveyed to the complainant, the accused, and each witness.
5. The investigator will prepare a written report of findings, which will be submitted to the department director and the agency's Deputy Attorney General. It is important to note that the ultimate decision for remedial action is the responsibility of the appointing authority; however, the investigation staff may suggest mediation services, if appropriate.
6. If findings substantiate sexual harassment or discrimination, the investigator will also provide a copy of the report to the Tort Claims Administrator in the Attorney General's office.

7. After the investigation has been completed, the department director will determine the appropriate resolution of the case. If warranted, the agency, after consultation with their Deputy Attorney General or staff counsel assigned to represent the agency pursuant to State Administrative Manual § 1702, shall take disciplinary action up to and including termination. The agency shall retain a written record of the findings of the investigation and the resolution of the complaint as confidential records.
8. The agency shall notify both the complainant and the accused in writing as to whether the investigation disclosed sexual harassment or discrimination. If the investigation disclosed sexual harassment or discrimination, the agency shall take appropriate corrective action and advise the complainant that appropriate corrective action has been taken. Further misconduct by the accused should be immediately reported to the agency coordinator and the Sexual Harassment/Discrimination Unit. Corrective action that involves discipline of the accused is confidential pursuant to NAC 284.718 and must not be disclosed except as authorized pursuant to NAC 284.726.

C. COMPLAINT SUBMITTED THROUGH THE HOTLINE

1. When an employee transmits a complaint of sexual harassment or discrimination through the hotline, the Sexual Harassment/Discrimination Unit will complete the initial intake report.
2. The employee will be asked to submit the completed complaint form to the investigation staff.
3. The investigator will forward a copy of the complaint form to the appropriate agency coordinator and the agency's Deputy Attorney General.
4. The investigation will then proceed as described for complaints submitted to Department directors (see Item VI-B).

SEXUAL HARASSMENT AND DISCRIMINATION POLICY ACKNOWLEDGEMENT

EMPLOYEE NAME _____

SOCIAL SECURITY # _____

DEPT/DIV/AGENCY/ORG#. _____

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I have read and understand the *Governor's Policy Against Sexual Harassment and Discrimination.*

EMPLOYEE SIGNATURE _____ DATE _____

SUPERVISOR SIGNATURE _____ DATE _____